



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

**[Docket No. 211019-0211]**

**RIN 0648-BK52**

### **Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Extension of Emergency Action to Temporarily Remove 2021 Seasonal Processing Limitations for Pacific Whiting Motherships and Catcher-Processors**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; emergency action extended.

**SUMMARY:** This temporary rule extends emergency measures that allow at-sea Pacific whiting processing vessels to operate as both a mothership and a catcher-processor during the 2021 Pacific whiting fishery. These emergency measures were originally authorized until November 10, 2021. This temporary rule extends the emergency measures through December 31, 2021. This action is necessary to ensure catcher vessels in the at-sea whiting sector are able to fully harvest sector allocations. Emergency measures under this extended temporary rule will allow catcher-processors to operate as motherships and replace mothership processing vessels that are unable to operate in the at-sea whiting sector during the ongoing COVID-19 pandemic and resulting high economic uncertainty in 2021.

**DATES:** The expiration date of the emergency rule published May 14, 2021 (86 FR 26439), is extended to December 31, 2021. The amendments in this temporary rule are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:**

## **Electronic Access**

Background information and analytical documents are available at the NMFS West Coast Region website at: <https://www.fisheries.noaa.gov/species/west-coast-groundfish.html> and at the Pacific Fishery Management Council's website at <https://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

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**SUPPLEMENTARY INFORMATION:** The regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) prohibit processing vessels in the at-sea Pacific whiting fishery from operating as both a mothership (MS) and catcher processor (C/P) during the same calendar year. C/P vessels conduct both harvesting and processing catch at-sea, while MS vessels solely process catch delivered by other vessels (referred to as catcher vessels). By design, some MS vessels are built solely to process catch delivered by other vessels while at-sea, whereas C/P vessels are capable of harvesting catch and receiving deliveries from catcher vessels. Because of this, some processing vessels are able to switch between the C/P and MS sectors, while other vessels are not. To help ensure market stability in the separate sectors, current regulations do not allow processing vessels to switch between the MS and C/P sectors in a single calendar year. Under existing restrictions, a decision to operate a processing vessel as a C/P in response to the ongoing pandemic would preclude the same vessel from operating as an MS for the remainder of the 2021 fishing year, and vice versa. Catcher vessels in the at-sea whiting sector rely on MS vessels to accept delivery of their catch and, as a result, the amount of whiting these vessels can harvest is limited by the availability of at-sea processing vessels in the MS sector. Losing an MS processing vessel would prevent catcher vessels from harvesting their 2021 Pacific whiting allocations. The remaining

processing vessels participating in the MS sector would not possess the capacity to receive deliveries from all catcher vessels for the 2021 Pacific whiting season.

In 2020, NMFS issued an emergency rule (85 FR 37027, June 19, 2020) to allow vessels to operate as an MS and a C/P in the same year in response to industry requests and a Pacific Fishery Management Council (Council) recommendation. During the 2020 whiting season, several at-sea processing vessels experienced COVID-19 outbreaks, forcing them to halt operations to prevent spreading infection to additional vessels and shorebased facilities. COVID-19 outbreaks and resulting shutdowns increased operational costs and caused foregone opportunities in the at-sea whiting fishery. In 2020, five MS permits were used to process MS allocations. The 2020 emergency action (85 FR 37027, June 19, 2020) provided temporary operational flexibility for the at-sea sector for 180 days and expired on December 16, 2020. However, it was unforeseen when the Council made its recommendation in 2020 how long the COVID-19 pandemic would last, how COVID-19 disease variants would emerge, and when vaccination efforts would be complete.

During the March 2021 Council meeting, industry members from the MS sector submitted a letter to the Council requesting action to continue addressing this issue. In their letter, industry members estimated that the loss of one MS processing vessel would leave approximately 24 percent of the MS sector allocation unharvested. The Council Groundfish Advisory Panel (GAP) supported the industry statement and estimated economic impacts that would result from lost at-sea processing capacity. The Council's Groundfish Management Team (GMT) provided additional analysis showing that compared to 2016-2019 fishing years, the proportion of whiting harvested in 2020 decreased by 13 percent in the MS sector and 2 percent in the C/P sector. The GMT's analysis showed that these decreases likely reflected COVID-19 impacts, including a lack of processing vessels available to catcher vessels due to attempts to minimize the spread

of COVID-19. Due to the continued risk to at-sea whiting vessels and loss of processing capacity should a COVID-19 outbreak occur onboard a processing vessel, the Council GAP and GMT advisory bodies recommended the Council take emergency action to allow available vessels to operate as both types of processing vessels for the 2021 fishing year to mitigate potential economic hardship.

On March 9, 2021, the Council voted to request that NMFS initiate an emergency action to temporarily allow any eligible MS and C/P to operate as both types of processing vessel during the 2021 Pacific whiting season. This action was not an extension of the 2020 emergency rule (85 FR 37027, June 19, 2020), but rather a new emergency rule for the 2021 Pacific whiting fishing year. Accordingly, on May 14, 2021, NMFS published a temporary emergency rule (86 FR 26439) granting the Council's recommendation. NMFS held a public comment period on the May 2021 Emergency rule (86 FR 26439) for 30 days from May 14, 2021, to June 14, 2021, and received no comments. Under the May 2021 temporary emergency rule, vessels were not required to declare which sector they would operate in for the year at the beginning of the season. This temporary emergency action also allowed at-sea Pacific whiting processing vessels to switch operations for 180 days after publication (*i.e.*, until November 10, 2021). Because there is still continual risk to at-sea whiting vessels and loss of processing capacity due to the ongoing COVID-19 pandemic, NMFS is extending the emergency measures in the May 2021 emergency rule until December 31, 2021, when the 2021 Pacific whiting fishery closes. This extension will allow the fishery to fully utilize the flexibilities created through the emergency rule and mitigate additional economic harm from the COVID-19 pandemic.

#### **Justification for Emergency Action**

Because there is still continual risk to at-sea whiting vessels and loss of processing capacity due to the ongoing COVID-19 pandemic, NMFS is now extending

these emergency measures as authorized under section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). For additional explanation on the rationale and effects of this emergency rule extension, see the original emergency rule published on May 14, 2021 (86 FR 26439).

### **Extended Emergency Measures**

NMFS is extending the original emergency regulations in the May 14, 2021 rule (86 FR 26439). This emergency action extension removes restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as an MS or C/P in the same calendar year for the remainder of the 2021 Pacific whiting fishing year, effective [*insert date of publication in the FEDERAL REGISTER*]. This action temporarily (until December 31, 2021) allows a processing vessel to operate as both an MS and C/P in the same calendar year, but not on the same trip. This action does not modify or change any other aspects of the at-sea Pacific whiting fishery. Owners of processing vessels that intend to operate as both an MS and a C/P during the 2021 Pacific whiting season must follow this procedure:

*1) Submit a request to register for both processing permits.* The vessel may be registered under both an MS permit and a C/P endorsed permit simultaneously for the duration of the emergency rule. The owner of a processing vessel currently registered under a C/P endorsed permit may also operate as an MS by submitting a request to NMFS Permits to register the processing vessel under a valid MS permit per regulations in 50 CFR 660.25(b). The owner of a processing vessel currently registered under an MS permit may also operate as a C/P by submitting a request to NMFS Permits to register the processing vessel under a valid C/P endorsed permit per regulations in 50 CFR 660.25(b).

*2) Submit a notification of a material change to coop agreement within 7 days.*

To operate in the MS fishery (*i.e.*, receive deliveries of catch from MS catcher vessel and process MS sector allocations at-sea) the vessel must be included in the MS coop

agreement. To operate in the C/P fishery (*i.e.*, catch and process C/P sector allocations at-sea) the vessel must be included in the C/P coop agreement. Including a new vessel in either the MS or C/P coop agreement constitutes a material change to the coop agreement. Within 7 calendar days of the new processing vessel operating for the first time in either the 2021 MS coop fishery or the 2021 C/P coop fishery, the respective coop manager must notify NMFS in writing of such change to the coop agreement as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(4) and 50 CFR 660.160(d)(1)(iii)(B)(4).

*3) Submit a revised coop agreement within 30 days of material change to the coop agreement.* Within 30 days of a new vessel participating in a coop fishery, the MS or C/P coop manager must submit a revised coop agreement to NMFS that lists all vessels and/or processing vessels operating in the respective coop and includes the new processing vessel, along with a letter describing the change to the coop agreement, as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(4) and 50 CFR 660.160(d)(1)(iii)(B)(4).

*4) Change vessel declaration before each fishing trip.* For each trip, the vessel must update its vessel monitoring system (VMS) declaration to reflect its activity for that trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The declaration is binding for the duration of the trip and may not be changed until completion of the trip. A processing vessel must submit one of the following declarations: a) Limited entry midwater trawl, Pacific whiting catcher/processor sector; or b) Limited entry midwater trawl, Pacific whiting mothership sector (mothership).

*5) Economic Data Collection (EDC) Program.* A separate EDC form is required for the owner, lessee, charterer of a mothership vessel registered to an MS permit as well as owner, lessee, charterer of a catcher processor vessel registered to a C/P-endorsed limited entry permit. If a vessel holds both types of permits in one calendar year, two EDC forms must be submitted as specified at 50 CFR 660.114.

6) *Expiration of Emergency Measures.* Vessels that have operated as both an MS and C/P in 2021 would be required to cease operations after December 31, 2021.

### **Classification**

NMFS is issuing an extension of this emergency rule pursuant to section 305(3)(c) of the Magnuson-Stevens Act. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C 553(b)(B) of the Administrative Procedure Act (APA) that it is unnecessary, impracticable, and contrary to the public interest to provide for any additional prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis, coupled with the fact that the public has had the opportunity to comment on the original emergency rule, make solicitation of additional comment unnecessary, impractical and contrary to the public interest. This action is needed immediately to enable necessary operational flexibility to harvest the United States' allocation of whiting. NMFS is implementing this extension of an emergency action to continue to reduce the impact of potential health issues caused by COVID-19 outbreaks that may impact harvesting and processing. For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this temporary rule under 5 U.S.C 553(d)(3).

This action is being taken pursuant to the emergency provision of Magnuson-Stevens Act and is exempt from Office of Management and Budget (OMB) review.

This temporary rule references a collection-of-information requirement that is subject to review and approval by OMB under the Paperwork Reduction Act. This requirement was approved by OMB under Control Number 0648-0573. This temporary rule does not modify this collection-of-information requirement. The Regulatory Flexibility Act does not apply to this emergency rule because prior notice and opportunity for public comment is not required.

## *Recordkeeping and Reporting Requirements*

The extension of this emergency action includes record keeping and reporting requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: Expanded Vessel Monitoring System (VMS) Requirements for the Pacific Groundfish Fishery. Prior to leaving port, an at-sea Pacific whiting processing vessel must declare whether it will be operating in the MS sector or the C/P sector for each trip. Vessels in fisheries off West Coast states must declare through VMS the gear type and sector in which they will participate, including the limited entry midwater trawl and Pacific whiting MS and C/P sectors, as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The number of declaration reports the vessel operator is required to submit to NMFS would not change under this action. In addition, this action does not change existing recordkeeping and reporting requirements. Therefore, no entity would be subject to new reporting requirements under this emergency action.

### **List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: October 19, 2021.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

### **PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:



**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.25, revise paragraph (b)(4)(vii)(D) to read as follows:

**§ 660.25 Permits.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vii) \* \* \*

(D) *Emergency rule extending season flexibility on at-sea processing restrictions.*

Effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, vessels may be registered to both a limited entry MS permit and limited entry trawl permit with a C/P endorsement during the same calendar year. Vessels registered to both an MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both an MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

\* \* \* \* \*

3. In § 660.112, revise paragraphs (d)(3)(i) and (e)(3)(i) to read as follows:

**§ 660.112 Trawl fishery—prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) Effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, a vessel that was used

to fish in the C/P fishery may be used to receive and process catch as mothership in the same calendar year, but not on the same fishing trip.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) Effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, catcher-processor vessels and motherships are exempt from the prohibition in this paragraph (e)(3).

\* \* \* \* \*

4. In § 660.150, revise paragraphs (b)(1)(i)(D), (b)(2)(ii)(B)(*I*), (f)(1)(iii), and (f)(2)(i)(A) to read as follows:

**§660.150 Mothership (MS) Coop Program.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, a vessel may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(*I*) Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of

this part, a vessel may operate as both an MS and C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iii) *Emergency rule extending seasonal flexibility on at-sea processor restrictions.* Effective [insert date of publication in the *FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, vessels may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

(2) \* \* \*

(i) \* \* \*

(A) *Emergency rule extending seasonal flexibility on at-sea processing restrictions.* Effective [insert date of publication in the *FEDERAL REGISTER*] until December 31, 2021, a vessel registered to an MS permit is exempt from the declaration in this paragraph (f)(2)(i) and may also operate as a C/P during the 2021 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a mothership.

\* \* \* \* \*

5. In § 660.160, revise paragraphs (b)(1)(i)(D), (b)(1)(ii)(A)(I), (e)(1)(iii)(A), and (e)(2)(i)(A) to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) Effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, a vessel may operate as both an MS and a C/P during the 2021 Pacific whiting primary fishing season, but not on the same fishing trip.

(ii) \* \* \*

(A) \* \* \*

(I) Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, a vessel may operate as both a mothership and C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) *Emergency rule extending seasonal flexibility on at-sea processor restrictions.* Effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2021, notwithstanding any other section of this part, vessels may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *Emergency rule extending seasonal flexibility on at-sea processing restrictions.* Effective *[insert date of publication in the FEDERAL REGISTER]* until December 31, 2021, a vessel registered to a C/P endorsed permit is exempt from the declaration in this paragraph (e)(2)(i) and may also operate as an MS during the 2021 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a C/P.

\* \* \* \* \*

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